



POLICE DEPARTMENT

June 21, 2010

MEMORANDUM FOR: POLICE COMMISSIONER

RE: Detective Salvatore DeSantis
Tax Registry No. 897333
Narcotics Borough Staten Island
Disciplinary Case No. 85342/09

The above-named member of the Department appeared before me on January 15, 2010, charged with the following:

1. Said Detective Salvatore DeSantis, assigned to Narcotics Borough Staten Island, while on duty, at about 1915 hours on December 22, 2007, at the Kohls Department Store parking lot on Forrest Avenue, Richmond County, did abuse his authority as a member of the New York City Police Department in that he searched a vehicle occupied by Joshua McKinney and Russell Ferran without having the requisite legal authority to do so: to wit, Respondent searched the interior of a car occupied by said individuals.

P.G. 203-10, Page 1, Paragraph 4 – ABUSE OF AUTHORITY

The Department was represented by Nancy Lichtenstein, Esq., Department Advocate's Office, and the Respondent was represented by James Moschella, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

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DECISION

The Respondent is found Not Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department offered the two out-of-court statement's of Russell Ferran and Joshua McKinney. Department's Exhibit (DX) 2 and 2A are the tape recording and transcript, respectively, of Ferran's statements and DX 1 and 1A are the tape recording and transcript, respectively, of McKinney's statements.

Russell Ferran

Russell Ferran (Ferran), a 38-year-old resident of Staten Island, was interviewed by Inspector Darya Kabakova of the Civilian Complaint Review Board (CCRB) on January 11, 2008. Ferran stated that at approximately 7:30 p.m. on December 22, 2007, he and his brother [Joshua McKinney] were in the parking lot of the Kohl's Department Store on Forest Avenue. They were driving around doing Christmas shopping at various stores and shopping centers in his brother's gold Nissan Sentra with Virginia tags. When they pulled into the Kohl's parking lot, they were listening to Christmas music. His brother parked the car and as they were exiting the vehicle, they were approached by some officers.

Ferran stated that a black Dodge Nitro and a black GMC Envoy pulled up behind them and that officers exited the vehicles. Ferran stated that the officer that exited the Envoy was very combative and that, "he was like hopped up on steroids or something.

[He] look[ed] like he lift[ed] weights.” This officer told Ferran’s brother to get out of the car, and also pushed Ferran down into his seat. Ferran stated that this officer was asking his brother, “a million questions, a hundred miles per hour.” Ferran stated that when he asked the officer, “what are you doing this for. I was told to shut the fuck up and sit there.”

The officers proceeded to search Ferran’s brother and then the vehicle as well. Ferran stated that one of the officers asked him if he had ever been arrested before, and he replied that he had. The officer then told him that it was he who locked him up. Ferran stated that he told the officers that what they were doing was illegal, but again, the same officer told him to “shut the fuck up, nigger.” Ferran stated that he sat there quietly and that the officers proceeded to search him. The officers took Ferran’s identification and ran a warrant check on him, which came back negative. The officer’s also took Ferran’s brother’s ID and ran a check on him. During this incident, Ferran and his brother were parked about “50 to 100 feet away from the store” and there was a crowd of shoppers who were watching.

Ferran stated that the officer driving the GMC Envoy was “the one who had all the mouth. He did the searching. He did all illegal things. He’s the one that did the racial slur.” Ferran stated that he asked the officer to see his badge and was told, “Shut the fuck up. We ask the questions here.” After the search was over, Ferran and his brother wrote down the make, model, and license plate numbers of the two vehicles.

Ferran stated that there were four officers in total – two in each police vehicle – and that they were all in plainclothes and not in uniform. The officer who did the searching was the driver of the GMC Envoy and was about 5’7” or 5’8”, “probably about

200, 215 [pounds] or something.” He had brown hair and brown eyes and Ferran thought that he was probably Italian. The other officer with him in the Envoy was approximately 5’6” and 175 pounds, and was wearing a green hat and a green bubble coat.

The other two officers had been riding in the Dodge Nitro and approached Ferran’s side of the car. The one who “told me to shut up...and searched me, he was probably about 5’11”...He had on a hat.” He was “probably Italian.” Ferran did not recall the ethnicity of the second officer. He was approximately 200 pounds, 6’2” or 6’3”, and had brown hair. He was dressed in all black and was not wearing a hat.

When the officers approached the car, there were two officers on each side. Ferran stated that the officer who pushed him back into the car and told him not to move was wearing a hat and had come from the Dodge Nitro. Ferran stated that when he asked the officer in the hat why they were doing this, he told him to “shut the fuck up.”

After a few minutes, Ferran was asked to step out of the car and he complied. The officer with the hat proceeded to pat him down and then searched through all of his pockets. During this time, Ferran told the officer that he had a small knife in his pocket, and he placed it on top of the car. Ferran stated that the officer who was aggressively questioning his brother proceeded to search everywhere in the car including the sides on the doors, the glove compartment, and under the seats. The officer did not have to open the trunk to search inside of it because the back seat was folded down.

Ferran stated that the officer with the hat took his ID and ran a warrant check on him. The officer who searched the car ran a warrant check on his brother. The officer who was aggressive and appeared to be on steroids was the only one to search the car.

Ferran stated that it was during the time that this officer was searching the car that he used the racial slur.

The whole incident lasted about 30 minutes and after it was over, Ferran and his brother walked into the store. Ferran stated that he noticed a plainclothes store security guard standing by the entrance and that he was about 5'8" and approximately 200 pounds. On the day of the incident, Ferran was wearing a brown coat, a brown scarf, a gold shirt, and blue jeans. His brother was wearing a black hoodie, black shirt, black pants and black sneakers.

Ferran stated that as a result of this incident he feels "more afraid of the cops than I am of anybody else out there." He stated that he drives for a living and that he is considering going to a doctor to get medication to help with his anxiety. Ferran stated that, "I'm pretty sure they do it to a lot of people. So, I think they should be in trouble." He did not want to participate in mediation with the officers.

Joshua McKinney

Joshua McKinney (McKinney), a 33-year old resident of Virginia, was interviewed by Inspector Darya Kabakova of the CCRB on February 15, 2008. McKinney stated that at approximately 7:15 p.m. on December 22, 2007, he and his brother were involved in an incident with four police officers. McKinney and his brother had stopped to buy cigarettes at a grocery store on Richmond Avenue on Staten Island, and then drove to the Kohl's Department Store on Forest Avenue to do some Christmas shopping.

McKinney stated that he and his brother were sitting in his car in the parking lot of Kohl's when they were approached by four officers. Two officers approached the driver's side of the car, where McKinney was seated, and two officers approached the passenger's side. One of the two officers that approached the driver's side was 5'10" or 5'11", and stocky. The other officer to approach his side of the car was about 5'6" or 5'7" and had a youthful appearance. One of the officers to approach the other side of the car was 6'2" or 6'3" and thin, and the other was approximately six feet tall and had a medium build.

All four of the officers were in plainclothes and had on black t-shirts that said "Police" on the back of them in white lettering. When asked if there were any distinguishing features of the officers such as facial hair or glasses, McKinney stated, "I really can't remember facial hair" and "I really can't remember." The stocky officer had brown hair and the short officer next to him was wearing a hat. The other two officers had dark brown hair. However, McKinney stated that, "the only two that stick in my head were the ones that were on my side of the car."

The officers approached in two unmarked cars, but McKinney does not recall which officers were in which car. One was a black Dodge Nitro and the other one was a black GMC Envoy. McKinney first noticed the officers when he attempted to get out of his car and was pushed back into his seat and told to sit down. McKinney was driving his car, a gold Nissan Sentra, and his brother, Russell Ferran, was seated in the passenger seat.

When the officers approached McKinney's car, the stocky officer asked him where he was from and what he was doing. It was this officer who did most of the

talking and told him to get out of the car. The officer asked if McKinney had any knives on him, and he responded that he did not know. McKinney sometimes kept a box cutter that he used for work in his car and did not know if it was present at that time.

At this point, McKinney was outside and placed his hands on the side of the car and the officer began searching his pockets. McKinney does not recall if the officer patted him down first before beginning the search. The officer searched each of McKinney's pockets, his waistband, and around his ankles underneath his shoes, but he did not find anything.

Shortly after this officer began to search McKinney, the shorter officer on the other side of the car began to search his brother in the same manner. The taller officer had taken their IDs and was running a warrant check using a machine in the Envoy. McKinney stated that his brother told the officers that what they were doing was illegal, and the stocky officer told him to, "shut up." McKinney's brother told the officers that he had been "locked up" before, and the stocky officer told him that, "we locked you up." Ferran told the officer that he was mistaken, that they did not lock him up before, to which the officer "was just like, shut up, nigger."

McKinney stated that during the incident, the stocky officer "was the one doing 95% of the talking." This officer would ask McKinney for his license, look at it, and then give it back to him. This happened four times until McKinney finally put it on top of the car in case the officer needed to see it yet again. McKinney's driver's license and license plates were both issued in Virginia.

The same officer that was doing the talking was the officer who proceeded to search the inside of the car. None of the other officers assisted him. The officer

proceeded to open the glove box, a console in the middle between the two front seats, and a change drawer right next to the door. The officer also used a flashlight to search underneath the seats and in the trunk, which he could access because one of the back seats of the car was folded forward to make room for gifts that they had bought. During the search, the only question that the officer asked McKinney was what they were doing at the corner store, and McKinney told him that they had bought cigarettes.

The officer did not find any contraband anywhere in the car. After the search was over, the officer once again asked for McKinney's ID. He looked at it and then returned it and at this point the officers left. McKinney did not see the officers write anything down. Ferran asked one of the officers on his side of the car for their badge number, but, they ignored this request. Instead, McKinney and his brother wrote down the license plate numbers for the police vehicles. All together, the incident lasted 10 or 15 minutes.

On the day of the incident, McKinney stated that he was wearing a black hooded sweatshirt, black pants, a red t-shirt, and black and white shoes. He did not recall what his brother was wearing, but, it might have been brown. McKinney stated that the officers found a small knife, shorter than "four fingers," in one of Ferran's pockets. When asked if the officers, "cursed or anything like that" other than the racial slur, McKinney stated that, "I don't think so, other than, you know...Because the nigger thing just threw me for a loop." McKinney was then shown a photo array and asked if he could identify any of the officers from the day of the incident.

The Respondent's Case

The Respondent called Lieutenant James Briscoe as a witness and testified in his own behalf.

Lieutenant James Briscoe

Briscoe is a 24-year member of the Department currently assigned to the Organized Crime Control Bureau. He stated that he works for the Chief of the Bureau and that his responsibilities include providing information from out in the field to the Chief. He reviews policy and procedures and he conducts an overview of jurisdiction. Prior to working for the Chief he was assigned to Narcotics Borough of Staten Island. He worked there from 2002 until 2008 and he was the narcotics squad commander. He stated that he knows the Respondent because he was assigned to one of his modules in Narcotics Borough Staten Island.

On December 22, 2007, Briscoe testified that he was assigned to Narcotics Borough Staten Island and was doing a third platoon as a team leader in a buy and bust narcotics operation. He explained that he was working with the Respondent, who was part of his field team, but they were not traveling in the same vehicle. Briscoe stated that he arrived at the Kohl's parking lot and was met by the Respondent and his partner. They explained to him that they had stopped a vehicle containing two persons and they explained the reason for the stop. The Respondent informed him that they stopped and questioned the two individuals and ultimately frisked them and recovered two knives from the individuals. Briscoe made inquiries as to what type of search was done and they explained that they looked around the car and did not find anything.

Briscoe stated that he directed the officers to obtain identification from the individuals and he would use their identifications to check whether they had outstanding warrants using the laptop computer he had in his car. The individuals had no warrants. Briscoe stated he also ran the registration on the vehicle and the vehicle was registered to one of the two individuals. There were no violations on the vehicle. He stated that he directed the Respondent to prepare the Stop, Question and Frisk Report and release the two individuals. When asked whether the Respondent informed him that he did an interior search of the vehicle, Briscoe stated, "No, he did not." He explained that from what he recalled there "was a cursory search from the outside of the vehicle" but no weapons or contraband were recovered that night. He denied that the glove compartment or any interior compartment of the vehicle had been searched.

Briscoe was informed that the complainants made allegations to CCRB that the lieutenant as well as numerous members of the field team made racial epithets at them. Briscoe denied this information. He also denied that a full search was done of the interior of the car or that the center console was searched. Briscoe also denied that the complainants asked for their names and shield numbers and they refused to provide them. He stated that the warrant checks were done, the results were negative, the individuals were given back their identifications and later that evening the Stop, Question and Frisk Reports were prepared.

During cross-examination, Briscoe acknowledged that he was called to the scene of the Kohl's Department Store parking lot by the Respondent and his partner, Bach. He explained that although two knives were recovered on the two individuals, they were actually stopped because of a suspicion of drug activity. He stated that although he

warned and admonished the two individuals for having the knives, they were not issued summonses for possession of the knives. He also explained that the two knives did not appear to be dangerous instruments in violation of the penal law. Briscoe explained that although the Respondent and his partner articulated what they thought was a narcotics transaction he did not authorize an arrest because no contraband or narcotics were present at the scene. He stated that there was insufficient information that could be brought forward to the District Attorney's Office and result in a fruitful prosecution. When asked whether he smelled marijuana emanating from the vehicle, Briscoe stated that he did not believe that he was close enough to smell anything coming from the vehicle particularly because it was outdoors on a cold night. But he acknowledged not smelling anything from the vehicle.

Upon questioning by the Court, Briscoe acknowledged that when he arrived at the Kohl's parking lot the Respondent and his partner had already conducted the search of the individuals. He explained that the Respondent and his partner were in chase car 1; that he was in the leader team car, which was chase car 2; and that the "P" (prisoner) van would usually be the third if he "were afforded the extra people." He said the function of the chase car was to be the team of apprehension officers, who make the field observations and who would go after the perpetrators once the undercover was able to make a buy. Briscoe stated that without the tactical plan in front of him he could not state for certain whether there was a second chase car.¹

¹ A stipulation was entered between the parties that McKinney was shown two officers photograph where he identified the officer he believed searched the vehicle [Respondent's Exhibit (RX)A and B] it was also stipulated that neither of the photographs were that of the Respondent.

The Respondent

The Respondent is a 19-year member of the Department currently assigned to Staten Island Narcotics. He has been assigned to Staten Island Narcotics for approximately 11 years and has been in the rank of detective for ten years. The Respondent denied that in his 19 years of service he has ever been the subject of Charges and Specifications aside from this case.

On December 22, 2007, the Respondent stated that he was assigned to a buy and bust operation in the Mariners Harbor section of Staten Island. He explained that he was in a chase car and that his team was conducting observations in the area. He further explained that they were looking for drug activity and that the location is known for drug activity. He stated that his partner on that day was Charles Bach. The supervisor of the team was Lieutenant Briscoe. The Respondent described a known drug user working the payphone at the time he was making his observation. He stated that the drug user kept making phone calls and was looking up and down the block from the corner of Grayson Street and Harbor Road. The Respondent continued to watch him and then observed a vehicle pull up. He saw the drug user go over to the vehicle, which was parked to the curb on the passenger side. The drug user went over to the passenger side and a conversation ensued. He observed what he thought was an exchange take place at that time.

The Respondent said that he was located approximately 75 to 100 feet from the vehicle. He described the area as very well lit and it was near a corner store so he could see what was taking place. The Respondent explained that the person he observed had been arrested numerous times for drug charges. He also had a housing trespass warrant

which made him subject to arrest if he were on the grounds of the housing projects a block and a half away.

Although he could not determine exactly what was exchanged, the Respondent believed it was a drug transaction. He also stated that the two people in the vehicle were later identified as Ferran and McKinney. The Respondent explained that he had conducted observations of this nature many times in the past prior to December 22, 2007. Once he observed what he thought was a drug transaction he remained in constant contact with his field team to let them know what was going on. Although he stated that he could not see what was exchanged between the two people, he had an opinion that it looked like a drug transaction. He explained that it looked as if the individual that was outside of the vehicle had money in his hand and he handed it over to the passenger in the vehicle.

The Respondent explained to his field team that if the car pulled off he would go after that car and he asked one of the members of his field team to apprehend the person on foot. He stated that the car pulled off, he pulled off after the car and radioed to his lieutenant, who was the supervisor in charge, what he was doing at the time. The Respondent explained that the car went approximately three long blocks on Harbor Road and that they quickly pulled into a Kohl's parking lot. He believed that the occupants of the car knew that they were being followed and that was why they made a quick turn into the parking lot. As soon as they pulled into the space the Respondent put on his car's lights and the two occupants of the car immediately jumped out of the car.

The Respondent stated that they made the stop at the Kohl's located on Forest Avenue on Staten Island. He stated that he was with his partner at the time. He noted that when giving a statement at CCRB, he stated that he was with his lieutenant. He

realized later sometime after the interview that his lieutenant was in a separate vehicle. He identified himself and tried to explain to the two men why they were being stopped. The Respondent said that the driver was cooperative but the passenger was pretty irate. He asked both of them if they had identification on them and if they were carrying weapons. The Respondent stated that he did not recall at CCRB that he had inquired whether they had weapons on them and that they both had knives which were documented in a UF 250, Stop, Question and Frisk Report, that he prepared.

The lieutenant came to the scene and the Respondent stated that he did a quick pat down of the individuals. It was dark outside and he also used his flashlight. He explained that when people jump out of the car the way those two individuals did, sometimes they drop things on the ground or try to kick them away so he used a flashlight to do a quick search around the vehicle. He could not recall if he looked inside of the car or simply from the outside of the car in the area where the two individuals were standing to see if there was any contraband. The Respondent further explained that he did a search on the exterior of the car, looking between the cars, on the side of each car, as well as underneath the car to see if there was any contraband. He stated that he looked inside of the vehicle from the outside. He looked at the seat area and the floor area where they were sitting to see if they had dropped anything while exiting the vehicle. The Respondent denied ever looking into the glove compartment or the center console. He also denied looking inside of the trunk or under the seats of the vehicle. The Respondent said he looked anywhere he could see outside the vehicle which included the floor, the seats, and the back seat of the vehicle. He stated that when the individuals exited the

vehicle the doors were still open. He could not recall if he poked his head inside of the vehicle but he stated that it was possible.

The Respondent testified that once the lieutenant arrived at the scene, he gave him ID cards of the two individuals and he ran them through the computer to see if they had any outstanding warrants. The Respondent stated that he did not have probable cause to arrest McKinney or Ferran. Neither had an outstanding warrant. Once he received the identification cards back, he went to his vehicle and prepared UF 250 reports. Once the reports were prepared, the identification cards were returned to the two individuals and the Respondent left the scene. The Respondent acknowledged that he personally prepared the Stop, Question and Frisk Reports for the two individuals.

During cross-examination, the Respondent acknowledged that he was in his vehicle approximately 100 feet away when he made the observations. He acknowledged that he was driving the vehicle, that this took place at approximately 7:30 P.M. and that it was in December. He admitted that he never actually saw what was exchanged between the passenger and the man on the street and that he had never received a radio run that McKinney or Ferran were engaged in criminal activity. He also acknowledged that he did not receive a radio run of shots fired. He acknowledged that he patted down McKinney and found a pocket knife. He did not know whether the size of the pocket knife was a legal size or not, but he acknowledged that he did not arrest either individual.

The Respondent acknowledged that during his CCRB interview he admitted to leaning his head into the car through the driver side window. He said that he never found contraband or weapons during that stop, that neither men were arrested or issued

summonses and that once he found out from the search that there was nothing present he left the scene.²

FINDINGS AND ANALYSIS

The Respondent stands charged with the sole specification of abuse of authority in that he searched the vehicle occupied by McKinney and Ferran without having the requisite legal authority to do so, to wit: Respondent searched the interior of a car occupied by said individuals. The Respondent is found Not Guilty. Evidence adduced at trial established that Respondent was working a buy and bust operation in the vicinity of Forest Avenue on Staten Island. He explained that it was a known drug location and his field team was making observations. Respondent observed a known drug user walking up and down nervously with money and then he used a pay phone. Shortly thereafter, a vehicle pulled up and the drug user approached the passenger side of the vehicle. Respondent alleged that he observed some type of exchange between the drug user and the person seated in the front passenger seat of the vehicle. The vehicle then left the scene.

Respondent stated that he followed the vehicle hoping to pull it over, but the traffic lights were green and the vehicle continued on until it reached the parking lot of a Kohl's Department Store where the driver quickly pulled into a spot and the vehicle's two occupants, later identified as McKinney and Ferran, exited the vehicle before he could approach them. Eventually he stopped them and questioned them. The Respondent said he frisked them for his safety and found that each had a pocket knife on his person. The Respondent testified credibly and he explained that he did not issue a

² The Court requested and received Stop, Question and Frisk Report Worksheets for Ferran and McKinney. They were received in evidence as Court Exhibit (CX) 1 and 2.

summons for the knives because they were pocket knives and he was unclear whether the knives they carried violated the penal law. He also stated that he stopped them because of a suspected drug transaction. He stated that he used his flashlight to look around the outside of the vehicle, underneath the vehicle and into the interior of the vehicle from the outside to see if he could observe any contraband in plain view. His efforts were unsuccessful. Respondent denied ever going into the vehicle, opening the glove compartment, the center console or searching the interior of the vehicle. He did state, however, that when McKinney and Ferran exited the vehicle, they left the doors open; he did not have any independent recollection of doing so, but he may have peered inside the window using the flashlight to look for drugs. He stated that he did ask both of them for identification and a warrant check was performed for each of them. Once he looked around and did not find any contraband, and the warrant check was fine, Respondent said he released McKinney and Ferran and prepared a Stop, Question and Frisk Report for each of them (See CX 1 and 2).

The Assistant Department Advocate (Advocate) cited cases to support the notion that the Court of Appeals has found that peering into the car and touching an object constituted an unlawful search, see People v. Miguel Torres, 74 N.Y.2d 224, 230 (1989). That case has been distinguished on at least 18 occasions and not followed by the Court since 1997. While the search in that matter resulted in evidence being precluded, such is not the case here. Evidence was not recovered and a Stop, Question and Frisk Report was prepared by the Respondent for the stops of both Ferran and McKinney. In addition, this Court looks to the intention of the Respondent as he conducted his stop. The Court of Appeals also held that, “the court’s focus must be on whether the conduct of the police

was reasonable in view of the totality of the circumstances.” See People v. Hensen, 21 A.D.3d 172,175 (First Dept.), leave denied, 5 N.Y.3d 828 (2005), and People v. Molnar, 98 N.Y.2d 328, 331 (2002). That is, whether the Respondent acted in good faith during the stop. The Respondent articulated his basis for the stop and the action he took. As the Respondent takes police action on the street, he is not expected to know every nuance as case law unfolds as to what constitutes a search.

Both McKinney and Ferran indicated that they would appear for trial, but neither came in to testify about their encounter with the police. Ferran in his statement said that there were four officers on the scene in plainclothes who came out of two vehicles. He identified one as the driver of the GMC Envoy. He said he was the “one who had all the mouth,” was rude, used racial slurs and pushed Ferran down into the car. He also stated that he was combative. Ferran described being pushed into the seat of the vehicle and sitting there while his brother, who was also in the car, was told to get out. Ferran sat and watched as the officers searched his brother and then the vehicle. Ferran stated, “And, I was sitting in the car. Tells my brother to get out...I was told to shut the fuck up and sit there. So, I sat there. Um, they’re searching my brother. They start searching the car...”

Ferran’s statement lacks credibility. For one, Ferran stated that he was pushed into the seat of the car while his brother was told to get out of the vehicle. Ferran claimed the officers then conducted a search of his brother, McKinney, as Ferran sat inside of the vehicle. It would seem tactically unwise for safety reasons to conduct a search of one person while another person who was also considered to be a suspect sat inside of the vehicle. According to the Respondent’s statement, he observed the passenger (Ferran) conduct some type of exchange with the drug user. It is highly unlikely that the four

officers on the scene would leave Ferran, the passenger, in the front seat in the vehicle after an alleged drug transaction. The Respondent's account that both occupants exited the vehicle upon his approach seems more plausible.

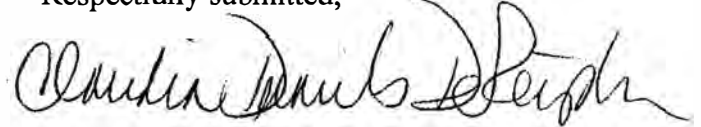
Ferran also described a combative officer who was using racial slurs as he searched the trunk of the car. Ferran gave only a general description of the officers in terms of height and weight, but could not recall the ethnicity of all four officers. McKinney, in his statement, also stated that he was pulled from the vehicle and searched while his brother, Ferran sat in the vehicle. McKinney said that he was the driver of the vehicle. Although he noted that there were two unmarked cars and two officers from one car approached the driver side of his vehicle while two from the other car approached the passenger side, he could only describe the officer who he alleged to have searched the vehicle as "stocky" and when asked if he had any other distinguishing features, McKinney said he could not recall. It was stipulated between the parties that McKinney viewed photos of officers and he picked two different officers who were not the Respondent and stated that they searched the vehicle (See RX A and B).

Without a positive identification of the Respondent as the officer who searched his vehicle, this hearsay statement standing alone without any corroboration does not lead to a finding by this Court that the Respondent and not any of the other three officers on the scene searched the vehicle without the requisite legal authority. It must be noted that both Ferran and McKinney described a search where the officer entered the vehicle, searched the glove compartment, the floor the center console and moved the things in the backseat of the car to search the trunk. The Respondent in this matter only admitted that he might have peered into the car with his flashlight, but that is not what Ferran and

McKinney alleged and nothing further in terms of a search was established at trial. In fact, it was not even established whether the Respondent frisked McKinney or Ferran or which vehicle he exited from. Thus the hearsay evidence in this matter is not only insufficient, but is not corroborated by any other evidence in this proceeding.

Accordingly, I find the Respondent Not Guilty.

Respectfully submitted,



Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials

APPROVED
AUG 11 2017

RAYMOND W. KELLY
POLICE COMMISSIONER